

# SENATE BILL No. 518

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-4-31; IC 4-12-1-14.3; IC 8-9.5-9-2.

**Synopsis:** Securitize tobacco settlement funds. Establishes the tobacco asset financing authority and provides for the sale of bonds payable from up to 40% of future tobacco settlement payments to the state. Limits the use of the bond proceeds to capital projects for state agencies and state educational institutions, grants to state educational institutions and other entities for certain capital projects, and retirement or restructuring of existing debt. Makes related changes in the statute governing distributions from the tobacco master settlement agreement fund.

**Effective:** July 1, 2003.

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**Clark**

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January 23, 2003, read first time and referred to Committee on Finance.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 518

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-4-31 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]:

4 **Chapter 31. Tobacco Asset Financing Authority**

5 **Sec. 1. As used in this chapter, "authority" refers to the tobacco**  
6 **asset financing authority established by this chapter.**

7 **Sec. 2. As used in this chapter, "board" means the governing**  
8 **board of the authority.**

9 **Sec. 3. As used in this chapter, "bonds" means bonds, notes, and**  
10 **other obligations and financing arrangements issued or entered**  
11 **into by the authority under this chapter.**

12 **Sec. 4. As used in this chapter, "master settlement agreement"**  
13 **has the meaning set forth in IC 24-3-3-6.**

14 **Sec. 5. As used in this chapter, "net proceeds" means the**  
15 **amount of proceeds remaining following each sale of bonds that**  
16 **are not required by the authority to:**

17 **(1) establish and fund reserve funds;**



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- (2) fund capitalized interest on the bonds;
- (3) pay expenses of the authority; and
- (4) pay the costs of issuance and other expenses and fees directly related to the authorization and issuance of bonds.

Sec. 6. (a) As used in this chapter, "program plan" means the combination of the specific purposes or projects:

- (1) that are listed in one (1) or more statutes enacted by the general assembly;
- (2) that are included within one (1) of the general categories described in subsection (b); and
- (3) for which the general assembly, by statute, finds that there is a need for the budget agency to request disbursement of money held in the tobacco asset financing fund.

The term does not include working capital.

(b) The general categories referred to in subsection (a)(1) are as follows:

- (1) Costs incurred for capital projects for state agencies and for state educational institutions (as defined in IC 20-12-0.5-1), including:

- (A) construction of buildings or structures;
- (B) acquisition of land;
- (C) site improvements;
- (D) infrastructure improvements;
- (E) rehabilitation, renovation, or enlargement of buildings or structures; or
- (F) acquisition or improvement of machinery, equipment, furnishings, or facilities;

or any combination of these.

- (2) Grants to state educational institutions (as defined in IC 20-12-0.5-1) and other entities for capital projects related to academic buildings, laboratories, and research parks.

- (3) Retiring or restructuring existing obligations issued by bodies corporate and politic or state educational institutions (as defined in IC 20-12-0.5-1).

Sec. 7. As used in this chapter, "sales agreement" means any agreement authorized by this chapter in which the state provides for the sale of a part of the state's share to the authority.

Sec. 8. As used in this chapter, "state agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government.

Sec. 9. As used in this chapter, "state's share" means all



1 payments required to be made by tobacco product manufacturers  
2 to the state, and the state's right to receive those payments, under  
3 the master settlement agreement.

4 Sec. 10. As used in this chapter, "tax exempt bonds" means  
5 bonds issued by the authority that are accompanied by a written  
6 opinion of bond counsel to the authority that the interest on the  
7 bonds is excluded from the gross income of the recipients for  
8 federal income tax purposes.

9 Sec. 11. As used in this chapter, "taxable bonds" means bonds  
10 issued by the authority that are not accompanied by a written  
11 opinion of bond counsel to the authority that the interest on the  
12 bonds is excluded from the gross income of the recipients for  
13 federal income tax purposes.

14 Sec. 12. As used in this chapter, "tobacco asset financing fund"  
15 means the tobacco asset financing fund established by this chapter.

16 Sec. 13. The tobacco asset financing authority is created as a  
17 separate body corporate and politic, constituting an  
18 instrumentality of the state for the public purposes set out in this  
19 chapter, but not a state agency.

20 Sec. 14. The authority may not create any obligation of the state  
21 or any political subdivision of the state within the meaning of any  
22 constitutional or statutory debt limitation. The authority may not  
23 undertake any activities other than those required to implement  
24 this chapter.

25 Sec. 15. The authority may not pledge the credit or taxing power  
26 of the state or any political subdivision of the state or make its  
27 debts payable out of any money except that of the authority  
28 specifically pledged for their payment.

29 Sec. 16. The authority may not pledge or make its debts payable  
30 out of the money deposited in the tobacco asset financing fund.

31 Sec. 17. This chapter does not restrict or limit the powers that  
32 the authority has under any other law of the state, but is  
33 cumulative as to any such powers. A proceeding, notice, or  
34 approval is not required for the creation of the authority or the  
35 issuance of bonds, debt obligations, or any instrument as security,  
36 except as provided in this chapter.

37 Sec. 18. The powers of the authority are vested in and shall be  
38 exercised by a board consisting of the following seven (7) members:

- 39 (1) The governor, or the governor's designee.
- 40 (2) The treasurer of state, or the treasurer of state's designee.
- 41 (3) The budget director, or the budget director's designee.
- 42 (4) Four (4) members appointed by the governor, not more

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than two (2) of whom may be members of the same political party, who:

- (A) must be residents of Indiana;
- (B) serve for terms of two (2) years and until their successors are appointed and qualified;
- (C) may be reappointed by the governor; and
- (D) serve at the pleasure of the governor.

Sec. 19. Four (4) members of the board constitute a quorum. The affirmative votes of four (4) members of the board, two (2) of whom must be the governor, treasurer of state, or budget director, are required for the authority to take any action. A vacancy on the board does not affect the ability of the remaining members to exercise all the powers of the authority.

Sec. 20. (a) The governor shall name the chairman from among the members to serve as chairman at the pleasure of the governor. The members shall elect from among their number a vice chairman, a treasurer, and other officers as they may determine.

(b) The members of the board appointed by the governor are entitled to a per diem allowance for attending meetings equal to that provided by law for members of the general assembly. All the members of the board shall receive reimbursement for actual and necessary expenses on the same basis as state employees.

(c) Meetings of the board shall be held at the call of the chairperson or when a majority of the members so request.

Sec. 21. Members of the board and persons acting on the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties conferred on them under this chapter.

Sec. 22. (a) The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers. In addition to other powers specified in this chapter, the authority may:

- (1) sue and be sued in its own name;
- (2) make and execute agreements, contracts, and other instruments, with any public or private person, in accordance with this chapter;
- (3) without the approval of the attorney general or any other state officer, employ bond counsel, other legal counsel, technical experts, and such other officers, agents, and employees (including an executive director to serve at the pleasure of the authority), permanent or temporary, as it

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considers necessary to carry out the efficient operation of the authority, and determine their qualifications, duties, compensation, and terms of service;

(4) invest or deposit money of or held by the authority in such deposits or investments as provided in a resolution of the authority or in a trust agreement entered into by the authority;

(5) create funds and accounts necessary to carry out its purposes;

(6) without complying with IC 4-22-2, adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with this chapter and necessary or convenient to regulate its affairs and to carry into effect the powers, duties, and purposes of the authority and conduct its business;

(7) acquire, own, hold, administer, and dispose of personal property;

(8) issue bonds and enter into other funding options for the purpose of implementing the program plan, consistent with this chapter;

(9) refund and refinance the authority's debts and obligations;

(10) sell, pledge, or assign, as security or consideration, a portion of the state's share sold to the authority under a sales agreement, to provide for and secure the issuance and repayment of its bonds;

(11) determine, in connection with the issuance of bonds and subject to the sales agreement, the terms and other details of any financing and the method of implementation of the financing;

(12) procure insurance, other credit enhancements, and other financing arrangements, and execute instruments and contracts and enter into agreements convenient or necessary to facilitate financing arrangements of the authority and to fulfill the purposes of the authority under this chapter, including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, forward purchase agreements, interest rate swaps, exchange or cap or floor agreements, and letters of credit;

(13) enter into agreements with the state for the distribution of amounts due the state under any sales agreement;

(14) make all expenditures that are incident and necessary to carry out its purposes and powers; and

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(15) perform any act not inconsistent with federal or state law necessary to carry out the purposes of the authority.

(b) The authority may not exercise the power of eminent domain or levy taxes of any kind.

Sec. 23. (a) The budget agency, acting on behalf of the state, may sell and assign to the authority, under one (1) or more sales agreements, not to exceed forty percent (40%) of the state's share to implement this chapter. The attorney general shall assist the budget agency in the preparation, modification, and review of all documentation as may be necessary to effect such a sale and to implement this chapter.

(b) Any sales agreement must be consistent with this chapter. The terms and conditions of the sale established in a sales agreement may include but are not limited to any of the following:

(1) A requirement that the state diligently enforce and pay the expenses of diligently enforcing the authority's right to receive the portion of the payments due under the master settlement agreement and sold under the sales agreement, to the full extent permitted by the master settlement agreement, and a statement that this requirement constitutes a material covenant of the state.

(2) A requirement that the state diligently enforce and pay the expenses of diligently enforcing IC 24-3-3 as contemplated by the master settlement agreement against all tobacco product manufacturers that are selling tobacco products in Indiana and are not signatories to the master settlement agreement, and a statement that this requirement constitutes a material covenant of the state.

(3) A requirement that the state not agree to any amendment of the master settlement agreement that materially and adversely affects the authority's ability to receive the state's share that has been sold to the authority under a sales agreement.

(4) A requirement that the state, a state agency, or other recipients of the proceeds of tax exempt bonds issued by the authority will not take any action that would adversely affect the tax exempt status of the bonds.

(5) A statement that the net proceeds from the sale of bonds shall be deposited in the tobacco asset financing fund and that in no event shall the amounts in the tobacco asset financing fund be available or be applied for payment of bonds or any claim against the authority or any debt or obligation of the

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authority.

(6) An agreement that the effective date of the sale is the date of receipt of the bond proceeds by the authority.

(c) Any sales made under this section are irrevocable during the time when bonds are outstanding under this chapter and are a part of the contractual obligation owed to the bondholders. The sale constitutes and shall be treated as a true sale and absolute transfer of the property so transferred and not as a pledge or other security interest for any borrowing. The characterization of such a sale as an absolute transfer shall not be negated or adversely affected by the fact that only a part of the state's share is being sold, or by the state's acquisition or retention of an ownership interest in the part of the state's share that is not being sold.

(d) On or after the effective date of such a sale, the state has no right, title, or interest in the portion of the master settlement agreement sold, and the part sold is the property of the authority and not the state and shall be owned, received, held, and disbursed by the authority or its trustee or assignee and not the state.

(e) On or before the effective date of the sale, the state shall notify the escrow agent or its assignee under the master settlement agreement of the sale and shall instruct the escrow agent or its assignee that subsequent to that date, all payments constituting the portion sold shall be made directly to the authority.

Sec. 24. (a) Subject to the receipt of written approval of the governor, the authority may issue taxable bonds or tax exempt bonds to provide for the implementation of this chapter and may proceed with a securitization to maximize the transference of benefits and risks associated with the master settlement agreement.

(b) Before issuing bonds under this chapter, the authority shall publish a notice of its determination to issue the bonds. The notice shall be published one (1) time in two (2) newspapers published and of general circulation in the city of Indianapolis. An action to contest the validity of:

(1) a series of bonds issued by the authority; or

(2) any sales agreement entered into by the authority and the state related to the bonds;

may not be brought after the fifteenth day following the publication of the notice. If an action challenging the bonds or sales agreement is not brought within the time prescribed by this subsection, the bonds or sales agreement shall be conclusively presumed to be fully authorized and valid under the laws of the state, and any person or entity is estopped from further

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questioning the authorization, validity, execution, delivery, or issuance of the bonds or the sales agreement.

Sec. 25. The net proceeds from bonds issued by the authority shall be deposited in the tobacco asset financing fund and used exclusively to carry out the program plan. In connection with the issuance of bonds and subject to the terms of the sales agreement, the authority shall determine the terms and other details of the financing and the method of implementation of this chapter. Bonds issued under this chapter may be secured by a pledge of the authority's interest in any sales agreement and any other sources available to the authority with the exception of money in the tobacco asset financing fund. The authority may also issue:

(1) refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds; and

(2) debt obligations that:

(A) have a maturity of not more than one (1) year from the date of issue; and

(B) are issued for the purpose of preserving any expenditure of money from the state general fund for reimbursement from the proceeds of any bonds to be issued under this chapter; and

(3) any other types of bonds, debt obligations, and financing arrangements necessary to fulfill the purposes of this chapter.

The state may transfer to the authority funds designated in the state's budget for an expenditure described in subdivision (2)(B) for the purpose of securing debt obligations described in subdivision (2). Debt obligations described in subdivision (2) may also be secured by a covenant of the authority to issue bonds under this chapter. The purpose for the issuance of debt obligations and the transfer of money as described in subdivision (2) shall be to maximize the use of tax exempt bonds by the authority.

Sec. 26. The authority may issue its bonds in principal amounts that, in the opinion of the authority, are necessary to provide sufficient funds for implementation of the program plan, the payment of interest on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The bonds, when issued, shall have all the qualities of negotiable instruments, subject to provisions for registration, under IC 26-1 and are incontestable in the hands of a bona fide purchaser or owner of the bond for value. Bonds issued under this chapter are exempt from the registration requirements

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of IC 23-2-1 and any other state securities registration statutes.

**Sec. 27. Bonds issued by the authority are special obligations of the authority payable solely and only out of the money, assets, or revenues pledged by the authority and are not a general obligation or indebtedness of the authority or an obligation or indebtedness of the state or any political subdivision of the state. The authority shall not pledge the credit or taxing power of the state or any political subdivision of the state, create a debt or obligation of the state, or make its debts payable out of any money except that of the authority specifically pledged to such purpose and shall exclude from any such pledge that money deposited in the tobacco asset financing fund.**

**Sec. 28. Bonds issued by the authority must state on their face that:**

- (1) they are special obligations payable both as to principal and interest solely out of the assets of the authority pledged for that purpose and do not constitute an indebtedness of the state or any political subdivision of the state;**
- (2) they are secured solely by and payable solely from assets of the authority pledged for that purpose;**
- (3) they constitute neither a general, legal, or moral obligation of the state or any of its political subdivisions; and**
- (4) the state has no obligation or intention to satisfy any deficiency or default of any payment of the bonds.**

**Sec. 29. Any amount pledged by the authority to be received under the master settlement agreement is valid and binding at the time the pledge is made. Amounts so pledged and then or thereafter received by the authority are immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of such a pledge is valid and binding as against all parties having claims of any kind against the authority, whether such parties have notice of the lien. Notwithstanding any other provision to the contrary, the resolution of the authority or any other instrument by which a pledge is created need not be recorded or filed to perfect the pledge.**

**Sec. 30. The following provisions apply to bonds issued under this chapter:**

- (1) The bonds must be in a form, issued in denominations, executed in a manner, and payable over terms, not to exceed forty (40) years, and with rights of redemption, as the board prescribes in the resolution authorizing their issuance.**
- (2) The bonds must be fully negotiable instruments under the**



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laws of Indiana. The sale of bonds issued under this chapter may be completed on a negotiated or competitive basis.

(3) The bonds must be subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest that may be fixed or variable during any period the bonds are outstanding, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by resolution of the board authorizing their issuance.

Sec. 31. Bonds issued under this chapter are hereby made securities in which all public officers and agencies of the state, all insurance companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds are hereby made securities that may properly and legally be deposited with and received by any officer or agency of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

Sec. 32. Following the approval of the governor, bonds may be issued by the authority in the manner provided by this chapter pursuant to a resolution adopted by the affirmative vote of two-thirds (2/3) of the members of the board, two (2) of whom must be the governor, the treasurer of state, or the budget director. No other proceedings shall be required for the issuance of the bonds. However, a resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer.

Sec. 33. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that a law shall not be enacted that impairs any obligation made under a sales agreement or any contract entered into by the authority with or on behalf of the holders of the bonds.

Sec. 34. (a) A tobacco asset financing fund is established, separate and apart from all other public money or funds of the state, under the control of the authority but for the exclusive benefit of the state. The fund consists of money paid to the authority and not pledged to the payment of bonds or otherwise obligated or any other money deposited to the fund by the

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authority, including but not limited to:

(1) payments received from the master settlement agreement that are not pledged to the payment of bonds or that are subsequently released from a pledge to the payment of any bonds;

(2) payments that, in accordance with any sales agreement with the state, are to be paid to the state and not pledged to the bonds, including that part of the proceeds of any bonds designated for purchase of a part of the state's share, that are designated for deposit in the fund, together with all interest, dividends, and rents on the bonds; and

(3) all securities or investment income and other assets acquired by and through the use of the money belonging to the fund and any other money deposited in the fund.

Money in the fund is to be used solely and only as provided in this section, may not be used for any other purpose, and is not available for the payment of any claim against the authority or any debt or obligation of the authority.

(b) There shall be established within the tobacco asset financing fund a "qualified tax exempt expenditure account" and a "taxable expenditure account". The net proceeds of all tax exempt bonds shall be deposited in the qualified tax exempt expenditure account. The net proceeds of all taxable bonds shall be deposited in the taxable expenditure account. Money deposited in the qualified tax exempt expenditure account shall be used to pay or reimburse the state for expenditures that are part of the program plan and are permissible under federal tax law governing tax exempt bonds. Upon request of the budget agency, payments or reimbursements for such tax exempt purposes shall be transferred by the authority to the treasurer of state for deposit in the state general fund or to such other fund as may be provided by law for the payment of the costs of implementing the program plan. Upon request of the budget agency, money deposited in the taxable expenditure account shall, upon direction of the authority, be transferred to the treasurer of state for deposit in the state general fund or to such other fund as may be provided by law for the payment of the costs of implementing the program plan.

(c) The treasurer of the authority shall act as custodian and trustee of the tobacco asset financing fund and shall administer the fund as directed by the authority. The treasurer of the authority shall:

(1) hold, invest, and disburse funds;



(2) sell any securities or other property held by the fund and reinvest the proceeds as directed by the authority, when considered advisable by the authority for the protection of the fund or the preservation of the value of the investment;

(3) subscribe, at the direction of the authority, for the purchase of securities for future delivery in anticipation of future income; and

(4) pay for securities, as directed by the authority, upon the receipt of the purchasing entity's paid statement or paid confirmation of purchase.

Any sale of securities or other property held by the fund under this subsection shall be made only with the approval of the authority in the manner and to the extent provided in this chapter with regard to the purchase of investments.

(d) All money paid to or deposited in the tobacco asset financing fund is available to the authority to be used in accordance with this chapter for:

(1) payment of amounts due to the state pursuant to the terms of the sales agreements entered into between the state and the authority;

(2) paying or reimbursing the state for expenditures that are permissible under federal tax law governing tax exempt bonds, provided that the money is transferred at the time of the payment or reimbursement to the treasurer of state for deposit in the state general fund and used by the treasurer of state solely to pay the costs of implementing the program plan;

(3) transfers to the state general fund or other funds as provided by law for the payment of the costs of implementing the program plan;

(4) interim transfers to the state as provided in subsection (e); and

(5) payment of any other costs other than the payment of bonds approved by the authority to implement this chapter.

(e) Before disbursement of the money in the tobacco asset financing fund in accordance with subsection (d), the authority may transfer money in the fund to the state general fund to fund the program plan on an interim basis, if the state agrees to reimburse the tobacco asset financing fund before the date that money is expected to be expended by the authority.

**Sec. 35.** Money of the authority, except as otherwise provided in this chapter or specified in a trust indenture or resolution pursuant

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to which the bonds are issued, shall be paid to the authority and deposited in the manner determined by the authority. The money shall be withdrawn on the order of the authority or its designee. All money of the authority or money held by the authority shall be invested and held in the name of the authority, whether held for the benefit, security, or future payment to holders of bonds or to the state.

Sec. 36. On or before September, 1 2004, and each year thereafter, the authority shall submit to the governor and the legislative council a report covering its operations and accomplishments during the state fiscal year ending on the preceding June 30, including receipts and expenditures, assets and liabilities, a schedule of its bonds outstanding, and any other information the authority considers necessary.

Sec. 37. (a) The following provisions apply until the date that is three hundred sixty-six (366) days after the date upon which the authority no longer has any bonds outstanding:

(1) The authority is prohibited from filing a voluntary petition under chapter 9 of the federal bankruptcy code or any corresponding chapter or section that may, from time to time, be in effect.

(2) A public official or organization, entity, or other person may not authorize the authority to be or become a debtor under chapter 9 of the federal bankruptcy code or any successor or corresponding chapter or sections.

(b) This section shall be part of any contractual obligation owed to the holders of bonds issued under this chapter. Any such contractual obligation shall not subsequently be modified by state law during the period of the contractual obligation.

Sec. 38. The authority shall dissolve no later than two (2) years after the date of final payment of all outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this chapter. Upon dissolution of the authority, all assets of the authority shall be transferred to the state and shall be deposited in the state general fund, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title, or ownership to the state for receipt of payments under the master settlement agreement.

Sec. 39. All property of the authority is public property devoted

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to an essential public and governmental function and purpose and is exempt from all taxes and special assessments, direct or indirect, of the state or a political subdivision of the state. All bonds issued under this chapter are issued by a body corporate and politic of Indiana but not a state agency, and for an essential public and governmental purpose, and the bonds, the interest thereon, the proceeds received by the holder from the sale of the bonds to the extent of the holder's cost of acquisition proceeds received upon redemption prior to maturity, and proceeds received at maturity and the receipt of the interest and proceeds are exempt from taxation in the state for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

Sec. 40. (a) As used in this section, "sale part" means the part of the punitive damage award payment that is equal to the percentage determined under section 23(a) of this chapter.

(b) This section applies upon the entry of a judgment that includes a punitive damage award in a civil action related to tobacco products in which:

- (1) the state of Indiana, or an agency of the state of Indiana, is the party to the action receiving the award; and
- (2) a tobacco manufacturer that participates in the master settlement agreement is the party against which the judgment was entered.

IC 34-51-3-6 does not apply to such a punitive damage award.

(c) Upon entry of a judgment described in this section, the right of the state of Indiana, or an agency of the state of Indiana, to receive the sale part of the punitive damage award payment described in this section is assigned to the authority. For as long as this assignment is in effect, any sale part of a punitive damage award payment received by the state of Indiana, or an agency of the state of Indiana, in settlement of a judgment described in this section or as satisfaction or partial satisfaction of a judgment to which this section applies shall be considered to be held for the benefit of the authority and shall be remitted immediately after receipt of the payment, at the direction of the treasurer of state, to the authority subject to any pledge under this chapter.

(d) The authority may spend money received under this section in accordance with this chapter, subject to any pledge under this chapter.

(e) That part of the punitive damages award that exceeds the sale part under this section shall be paid to the state of Indiana or



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an agency of the state of Indiana, as applicable, and used as otherwise provided by law.

(f) The assignment under this section terminates upon the earlier of the date on which:

- (1) the authority is dissolved under section 38 of this chapter;
- (2) all outstanding bonds and other agreements of the authority have been paid in full or otherwise discharged; or
- (3) a state court has entered a final judgment from which no further appeal is allowed ordering the judgment debtor tobacco manufacturer to pay the state both its obligations under the master settlement agreement and any punitive damages to be paid to the state without set off, credit, or reduction of one (1) obligation on account of the other.

SECTION 2. IC 4-12-1-14.3, AS AMENDED BY P.L.291-2001, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14.3. (a) As used in this section, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.

(b) There is hereby created the Indiana tobacco master settlement agreement fund for the purpose of depositing and distributing money received under the master settlement agreement. The fund consists of:

- (1) all money received by the state under the master settlement agreement, **except for money that is payable to the tobacco settlement authority under a sales agreement entered into under IC 4-4-31;**
- (2) appropriations made to the fund by the general assembly; and
- (3) grants, gifts, and donations intended for deposit in the fund.

(c) Money may be expended, transferred, or distributed from the fund during a state fiscal year only in amounts permitted by subsections (d) through (e), and only if the expenditures, transfers, or distributions are specifically authorized by another statute.

(d) The maximum amount of expenditures, transfers, or distributions that may be made from the fund during the state fiscal year beginning July 1, 2000, is determined under STEP THREE of the following formula:

STEP ONE: Determine the sum of money received or to be received by the state under the master settlement agreement before July 1, 2001.

STEP TWO: Subtract from the STEP ONE sum the amount appropriated by P.L.273-1999, SECTION 8, to the children's health insurance program from funds accruing to the state from the tobacco settlement for the state fiscal years beginning July 1, 1999, and July 1, 2000.

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1 STEP THREE: Multiply the STEP TWO remainder by fifty  
2 percent (50%).

3 (e) The maximum amount of expenditures, transfers, or distributions  
4 that may be made from the fund during the state fiscal year beginning  
5 July 1, 2001, and each state fiscal year after that is determined under  
6 STEP THREE of the following formula:

7 STEP ONE: Determine the amount of money received or to be  
8 received by the state under the master settlement agreement  
9 during that state fiscal year, **including any amounts that are**  
10 **payable to the tobacco settlement authority under a sales**  
11 **agreement entered into under IC 4-4-31.**

12 STEP TWO: Multiply the STEP ONE amount by sixty percent  
13 (60%).

14 STEP THREE: Add to the STEP TWO product any amounts that  
15 were available for expenditure, transfer, or distribution under this  
16 subsection or subsection (d) during preceding state fiscal years  
17 but that were not expended, transferred, or distributed.

18 (f) **This subsection does not apply to amounts paid to the**  
19 **tobacco settlement authority under a sales agreement entered into**  
20 **under IC 4-4-31.** The following amounts shall be retained in the fund  
21 and may not be expended, transferred, or otherwise distributed from the  
22 fund:

23 (1) All of the money that is received by the state under the master  
24 settlement agreement and remains in the fund after the  
25 expenditures, transfers, or distributions permitted under  
26 subsections (c) through (e).

27 (2) All interest that accrues from investment of money in the fund,  
28 unless specifically appropriated by the general assembly. Interest  
29 that is appropriated from the fund by the general assembly may  
30 not be considered in determining the maximum amount of  
31 expenditures, transfers, or distributions under subsection (e).

32 (g) The fund shall be administered by the budget agency.  
33 Notwithstanding IC 5-13, the treasurer of state shall invest the money  
34 in the fund not currently needed to meet the obligations of the fund in  
35 the same manner as money is invested by the public employees  
36 retirement fund under IC 5-10.3-5. The treasurer of state may contract  
37 with investment management professionals, investment advisors, and  
38 legal counsel to assist in the investment of the fund and may pay the  
39 state expenses incurred under those contracts from the fund. Interest  
40 that accrues from these investments shall be deposited in the fund.  
41 Money in the fund at the end of the state fiscal year does not revert to  
42 the state general fund.

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(h) The state general fund is not liable for payment of a shortfall in expenditures, transfers, or distributions from the Indiana tobacco master settlement agreement fund or any other fund due to a delay, reduction, or cancellation of payments scheduled to be received by the state under the master settlement agreement. If such a shortfall occurs in any state fiscal year, the budget agency shall make the full transfer to the regional health facilities construction account and then reduce all remaining expenditures, transfers, and distributions affected by the shortfall.

SECTION 3. IC 8-9.5-9-2, AS AMENDED BY P.L.273-1999, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter, "authority" means:

- (1) an authority or agency established under IC 8-1-2.2 or IC 8-9.5 through IC 8-23;
- (2) the commission established under IC 4-13.5;
- (3) only in connection with a program established under IC 13-18-13 or IC 13-18-21, the bank established under IC 5-1.5;
- ~~or~~
- (4) a fund or program established under IC 13-18-13 or IC 13-18-21; ~~or~~
- (5) the authority established under IC 4-4-31.**

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